

2.) Defendants' argument also appears to be supported by *Calamia v. Spivey*, 632 F.2d 1235, 1238 (5th Cir. 1980) ("ERISA does not entitle the [Plaintiff] to a jury trial."). In light of these authorities, and especially in the absence of any counterargument from Plaintiff, the Court agrees with Defendants that Plaintiff may not demand a jury trial on his first and second claims.

With regard to Plaintiff's sixth claim for relief, Defendant argues that the plain text of 29 U.S.C. § 1132(g)(1) commits to the discretion of "the court" whether to award attorney's fees and costs. (Defs.' Mot. Strike, Doc. No. 56, at 3-4.) Defendants also argue that *Gibbs v. Gibbs*, 210 F.3d 491 (5th Cir. 2000), declares jury trials unavailable in claims for attorney's fees and costs under ERISA. (Defs.' Mot. Strike, Doc. No. 56, at 3-4.) Especially in light of *Calamia*, and in the absence of any counterargument from Plaintiff, the Court finds Defendants' arguments, particularly its citation to *Gibbs*, persuasive. *See Gibbs*, 210 F.3d at 497 n.6 (acknowledging that because "the denial of a jury trial was never raised on appeal" and is therefore "beyond the scope of our review," but nonetheless agreeing in dicta with the district court's finding that "claims [for attorney fees] under ERISA are equitable in nature and are not entitled to a jury trial").

For the foregoing reasons, Defendants' Motion to Strike Jury Demand (Doc. No. 56) is **GRANTED.**

IT IS SO ORDERED.

SIGNED this 28th day of January, 2008.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TO ENSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL
FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY
EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT